Supreme Court, U.S.
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No. 97-1592

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1997

COLERAIN HILLS INVESTMENT, CO.
Petitioner,

v.

BOARD OF REVISION OF HAMILTON COUNTY, et al.
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS BOARD OF REVISION OF HAMILTON COUNTY AND DUSTY RHODES OF HAMILTON COUNTY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DOES THIS COURT HAVE JURISDICTION TO GRANT THE WITHIN PETITION FOR A WRIT OF CERTIORARI?

II. DID THE DISMISSAL OF PETITIONER'S STATE LAW ADMINISTRATIVE TAX APPEAL, DUE TO PETITIONER'S FAILURE TO FOLLOW STATE STATUTORY DIRECTIVES FOR PERFECTING SAID APPEAL, VIOLATE ANY FEDERALLY SECURED LEGAL OR CONSTITUTIONAL RIGHT OF PETITIONER?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner: COLERAIN HILLS INVESTMENT CO.

Respondents: BOARD OF REVISION OF HAMILTON COUNTY; NORTHWEST LOCAL SCHOOL DISTRICT BOARD OF EDUCATION; DUSTY RHODES, AUDITOR OF HAMILTON COUNTY

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JURISDICTION

This case involves no question of federal law whatever. It arises merely from the dismissal of petitioner's state law appeal of its state law property tax liability, which appeal was taken in state court and was governed by state statute. The Petitioner's appeal was dismissed by both a Magistrate and later a Judge of the Hamilton County Court of Common Pleas due to petitioner's failure to comply with the relevant statutes governing such appeals. The dismissal was affirmed by the Hamilton County Court of Appeals, First Appellate District. The Supreme Court of Ohio declined to exercise jurisdiction of petitioner's appeal and denied review of the judgment of The Court of Appeals.

The considerations governing this Court's jurisdiction on a writ of certiorari are enumerated in Rule 10 of the Rules of the Supreme Court of the United States. That rule clearly states, in relevant part, "A petition for a writ of certiorari will only be granted for compelling reasons." In light of the considerations enumerated in Rule 10, this Court does not have jurisdiction to grant the within petition, and thus the petition must be denied. In addition, respondents state that there is no compelling reason for the petition to be granted.

STATEMENT OF THE CASE

This is a case in which the petitioner sought review of the value of its Hamilton County, Ohio real property which respondent Dusty Rhodes, the Hamilton County Auditor, had set at $11,704,000.

In Ohio, an independent Board, called the Board of Revision, which is comprised of the County Auditor, County Treasurer and President of the Board of County Commissioners, hears and decides complaints on real property tax appeals pursuant to Ohio Revised Code ("R.C.") 5715.05. (Contrary to Petitioner's assertion, no member of the Department of Taxation, which is a state administrative department, sits on the Board of Revision.)

At the hearing before the Board of Revision, three appraisers testified; one for the petitioner, one for respondent Rhodes, the Hamilton County Auditor, and one for respondent School Board. The petitioner's appraiser valued the property at $11,150,000 (which, contrary to Petitioner's assertion, did not suggest something "grossly overestimated" (Petition, p. 3)). The expert appraiser for respondent Rhodes appraised the property at $13,075,000. The Board of Revision found respondent Rhodes' appraiser more credible and essentially adopted his opinion of value. (Again, this is contrary to petitioner's assertion that the decision was not based on "evidence or logic" (petition, p. 3)).

The Petitioner, represented by counsel, then chose to appeal this decision to the Court of Common Pleas of Hamilton County pursuant to R.C. §5717.05. Petitioner could have chosen to appeal to another independent tribunal, the Ohio Board of Tax Appeals in Columbus, Ohio, pursuant to R.C. §5717.01. (Again, contrary to petitioner's assertion,

the Ohio Board of Tax Appeals (BTA) is not part of the executive branch of government (Petition, p. 15) and it is not part of the Ohio Department of Taxation (Petition, p.7).) The BTA is an independent quasi-judicial administrative tribunal.

In its appeal to the Court of Common Pleas, the petitioner failed to name all the necessary parties as specifically required by R.C. §5717.05. The Ohio Supreme Court has long held that because tax appeals are a special statutorily-created remedy, strict adherence to the statutory requirements is required.

In this case, the petitioner, represented by experienced counsel, unfortunately simply failed to follow precisely the clearly set-forth requirements of the statute, by failing to name the proper parties to the appeal.

As a result of petitioner's failure as petitioner correctly points out in his petition, a Magistrate of the Common Pleas Court dismissed the appeal and that decision was affirmed by a Judge of the Common Pleas Court and the Hamilton County Court of Appeals First Appellate District of the State of Ohio. The Supreme Court of Ohio declined to hear the case because it did not involve any substantial constitutional question.

ARGUMENT

ISSUE #1. THIS COURT DOES NOT HAVE JURISDICTION TO GRANT THE WITHIN PETITION FOR A WRIT OF CERTIORARI.

Rule 10 of the Rules of the Supreme Court of the United States provides, in relevant part, that "A petition for a writ of certiorari will be granted only for compelling reasons." Rule 10 goes on to enumerate the considerations governing review on certiorari, the only ones relevant to this proceeding being when:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with a decision of another state court of last resort or of a United States Court of Appeals; [or]
>
> (c) a state court or United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. (Emphasis added.)

In this case, the "state court of last resort" in Ohio, i.e., the Ohio Supreme Court, did not accept jurisdiction of petitioners' appeal, and thus did not decide anything. Even if this Court construes the term "court of last resort" to include the Hamilton County Court of Appeals, First Appellate District of Ohio, that court did not decide "an important

federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals". Indeed, this case presents no "federal question" whatever. Accordingly, this Court would not have jurisdiction over the within petition under consideration (b) of Rule 10.

Furthermore, the highest Ohio state court that has decided this case, i.e., the Hamilton County Court of Appeals, First Appellate District of Ohio, has neither "decided an important question of federal law that has not been, but should be, settled by this Court", nor has it "decided an important federal question in a way that conflicts with relevant decisions of this Court". This case presents no "question of federal law" at all. Thus, no jurisdiction would lie under consideration (c) of Rule 10.[1]

Additionally, there are no compelling reasons to grant the petition in this case. This case merely concerns a decision on a state law appeal from a County administrative tribunal in which the state Courts decided the petitioner failed to follow the clearly expressed state statutory directives. Thus, the case clearly does not present any federal question, much less "an important federal question."

Rule 10 of this Court's rules concludes by stating that "...A petition for writ of certiorari is rarely granted when the

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[1] The First Appellate District of Ohio is comprised solely of Hamilton County, Ohio. Thus, decisions of the Hamilton County Court of Appeals, First Appellate District of Ohio, are binding only in Hamilton County, Ohio. Ohio Constitution, Article IV, §3; **Linkensdorfer v. Wentzel**, 4 ONP 94, 6 O. Dec. 6; **Kings Powder Co. v. Thrasher**, 20 onp ns 401, 28 O.Dec. 356.

asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law..." And, the within petition, in effect, if not in so many words, asserts both.

Accordingly, respondents respectfully submit that this Court has no jurisdiction to grant the petition, and thus that the petition must be denied.

ISSUE #2. THE DISMISSAL OF PETITIONER'S STATE LAW ADMINISTRATIVE TAX APPEAL DUE TO PETITIONER'S FAILURE TO FOLLOW STATE STATUTORY OBJECTIVES FOR PERFECTING SAID APPEAL DID NOT VIOLATE ANY FEDERALLY SECURED LEGAL OR CONSTITUTIONAL RIGHT OF PETITIONER.

There is nothing particularly unusual about this case. The petitioner filed a complaint with the Hamilton County Board of Revision (BOR) to have its property reduced. The BOR conducted a full evidentiary hearing and, based in part on the appraisal and testimony of an independent real estate expert hired by respondent Rhodes, decided to increase the value of the property over its originally assessed value.

In Trebmal Constr. Inc. vs. Cuyahoga Cty. Bd. of Revision (1994) 94 Ohio App.3d 246, 640 N.E.2d 601 the Cuyahoga County Court of Appeals dealt with a claim similar to that presented here that such a dismissal violated the United States Constitution. The Court said the following at page 254:

> With regard to the remaining claims that dismissal violated the property owner's constitutional rights, we note that a litigant has no inherent right to appeal a tax determination, only a statutory right. Cooke vs. Kinney (19981), 65 Ohio St.2d 7, 8, 417 N.E.2d 106, 107-108. Further, although Trebmal and Fuchs assert that they were denied their constitutional rights of due process, this court in 75 Pub Square rejected the property owners' claim that R.C. 5715.05 creates an "impermissible race to the courthouse" in violation of the Due Process Clauses of the Ohio and United States Constitutions. Trebmal and Fuchs further assert that the BTA's dismissal has deprived them of their constitutional right to uniformity and equality of assessment. We find, however, that Trebmal's and Fuch's appeals failed because the owners of property were unwilling to submit to exclusive appellate jurisdiction in conformance with the statutory options under R.C. Chapter 5717, rather than because of any constitutionally defective provision of R.C. 5717.05. (Emphasis added)

In this case, the dismissal of the action was caused by the Petitioner's failure to correctly follow the statutory guidelines of the forum it voluntarily chose, rather than any constitutionally defective provision.

In Huber Hts. Circuit Courts, Ltd. v. Carne (1996) 74 Ohio St.3d 306, 658 N.E.2d 744, The Ohio Supreme Court held as follows at page 308:

> R.C. 5717.05 set forth who may appeal, how one appeals, whom the appellant names as appellees, and how the appellant serves appellees with notice of the appeal. We read this statute as mandatory and jurisdictional. Since appellants did not follow the statute precisely, the court of common please correctly dismissed their appeal. (Emphasis added.)

Clearly, the dismissal of the subject appeal was the result of the Petitioner failing to "submit to exclusive appellate jurisdiction in conformance with the statutory options."

In this case the Petitioner chose to appeal the case to the Court of Common Pleas, but neglected to name a necessary party. The Trial Court thus dismissed the appeal and the Court of Appeals affirmed on the basis of the Supreme Court's holding in Huber Hts., supra (1996) 74 Ohio St.3d 306, 658 N.E.2d 744.

The Ohio Supreme Court has long recognized that appeals from administrative boards are creatures of statute and strict compliance must be had. This is not a constitutional question, but rather a question of whether the failure to comply with a statutorily-created mandate warrants dismissal.

Petitioner had a choice of appealing the decision for a de novo hearing either before the Ohio Board of Tax Appeals or the Court of Common Pleas. Either remedy is strictly statutorily created and each has its advantages and disadvantages.

Among these are the following:

1) The BTA generally only hears cases in Columbus, so cost and travel time become a factor.

2) There is no filing fee for filing an appeal with the BTA. There is a filing fee in Common Pleas.

3) The BTA is not strictly bound by the Ohio Rules of Evidence as is the Court of Common Pleas. See Orange City School District Bd. of Education vs. Cuyahoga BOR (1996) 74 Ohio St.3d 415, 659 N.E.2d 1223.

4) The Standard of Review on appeal from the BTA is a showing of unlawful and unreasonable (R.C. §5717.04), whereas "against the manifest weight of the evidence" would suffice on an appeal from the Trial Court's decision.

5) There is a right of direct appeal to the Ohio Supreme Court from a decision of the BTA (R.C. §5717.04). An appeal from the Court of Common Pleas must just be taken to the Court of Appeals.

In this case the petitioner made a conscious strategic decision to appeal its case to the Court of Common Pleas rather than the BTA. Each avenue has its own precise guidelines. This case was dismissed because the petitioner failed to follow the express "mandatory and jurisdictional"

requirements of the statute under which it chose to appeal.

The mere fact that certain statutory remedies have certain disadvantages (as well as advantages) over other remedies does not deny equal protection of the laws, when one is free to voluntarily choose one statutory remedy over another for whatever strategic reason.

CONCLUSION

Based upon all of the foregoing, respondents pray that petitioner's within petition for a Writ of Certiorari be denied, in its entirety, at petitioner's cost and expense.

Respectfully submitted,
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